

ASSEMBLY BILL NO. 76—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE PUBLIC EMPLOYEES' BENEFITS PROGRAM)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning the Public Employees' Benefits Program. (BDR 23-497)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to the Public Employees' Benefits Program; revising provisions concerning reinstatement of insurance under the Program; authorizing the Board of the Program and certain advisory committees to meet in closed session under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, a retired public officer or employee of the State or a local
2 government, or his or her surviving spouse, who has cancelled insurance provided
3 under the Public Employees' Benefits Program is authorized to reinstate such
4 insurance, other than life insurance, during the so-called late enrollment period,
5 which occurs in each even-numbered year. (NRS 287.0205, 287.0475) **Sections 1**
6 **and 3** of this bill eliminate the right of biennial reinstatement for insurance
7 provided under the Program. However, **section 3**, with certain exceptions,
8 authorizes a retired public officer or employee of the State or a participating local
9 government, or his or her surviving spouse, to reinstate insurance if the retired
10 public officer or employee had more than one period during which he or she was
11 covered under the Program on or after October 1, 2011. **Section 3** also prohibits a
12 public officer or employee who retired from a local governmental agency, or his or
13 her surviving spouse, from reinstating health insurance under the Program if the
14 Board of the Program has adopted regulations that exclude such persons from
15 participation in the Program because they are eligible for health coverage from a
16 health and welfare plan or trust that arose out of certain collective bargaining
17 agreements or under certain federal laws.

18 The Open Meeting Law requires all meetings of public bodies to be open and
19 public unless otherwise provided by a specific statute. (NRS 241.020) However, a



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public body is authorized to hold a closed meeting, in relevant part, to consider the professional competence of a person, except in certain specified circumstances. (NRS 241.030) One such circumstance when a closed meeting is prohibited is if the person serves at the pleasure of a public body as a chief executive or administrative officer. (NRS 241.031) The Executive Officer of the Program is the chief administrative officer of the Program and serves at the pleasure of the Board. (NRS 287.0424) **Section 2** of this bill provides an exception to the requirements of the Open Meeting Law to authorize the Board to conduct an annual review of the performance of the Executive Officer in closed session.

The Attorney General, who is charged with interpreting and enforcing the Open Meeting Law, has interpreted the Open Meeting Law to prohibit the use of a closed session to narrow down candidates for employment with a public body or to begin the selection process. (*Nevada Open Meeting Law Manual* § 9.04 (10th ed. 2005)) **Section 2** creates an exception to this interpretation by authorizing any advisory committee appointed by the Board to recommend candidates for the position of Executive Officer to meet in closed session to deliberate on and select the final candidates for consideration by the Board.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 287.0205 is hereby amended to read as follows:

287.0205 1. A public officer or employee of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada who has retired pursuant to NRS 1A.350 or 1A.480, or 286.510 or 286.620, or is enrolled in a retirement program provided pursuant to NRS 286.802, or the surviving spouse of such a retired public officer or employee who is deceased, may, *except as otherwise provided in NRS 287.0475*, in any even-numbered year, reinstate any insurance, except life insurance, that, at the time of reinstatement, is provided by the last public employer of the retired public officer or employee to the active officers and employees and their dependents of that public employer:

(a) Pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or (d) of subsection 1 of NRS 287.025; or

(b) Under the Public Employees' Benefits Program, if the last public employer of the retired officer or employee participates in the Public Employees' Benefits Program pursuant to paragraph (a) of subsection 1 of NRS 287.025.

2. Reinstatement pursuant to paragraph (a) of subsection 1 must be requested by:

(a) Giving written notice of the intent of the public officer or employee or surviving spouse to reinstate the insurance to the last public employer of the public officer or employee not later than January 31 of an even-numbered year;



(b) Accepting the public employer's current program or plan of insurance and any subsequent changes thereto; and

(c) Except as otherwise provided in subparagraph (2) of paragraph (b) of subsection 4 of NRS 287.023, paying any portion of the premiums or contributions of the public employer's program or plan of insurance, in the manner set forth in NRS 1A.470 or 286.615, which is due from the date of reinstatement and not paid by the public employer.

➔ The last public employer shall give the insurer notice of the reinstatement not later than March 31 of the year in which the public officer or employee or surviving spouse gives notice of the intent to reinstate the insurance.

3. Reinstatement pursuant to paragraph (b) of subsection 1 must be requested pursuant to NRS 287.0475.

4. Reinstatement of insurance pursuant to subsection 1 excludes claims for expenses for any condition for which medical advice, treatment or consultation was rendered within 12 months before reinstatement unless the reinstated insurance has been in effect more than 12 consecutive months.

5. The last public employer of a retired officer or employee who reinstates insurance, except life insurance, which was provided to the retired officer or employee and the retired officer's or employee's dependents at the time of retirement pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or (d) of subsection 1 of NRS 287.025 shall, for the purpose of establishing actuarial data to determine rates and coverage for such persons, commingle the claims experience of such persons with the claims experience of active and retired officers and employees and their dependents who participate in that group insurance, plan of benefits or medical and hospital service.

Sec. 2. NRS 287.0415 is hereby amended to read as follows:

287.0415 1. A majority of the members of the Board constitutes a quorum for the transaction of business.

2. The Governor shall designate one of the members of the Board to serve as the Chair.

3. The Board shall meet at least once every calendar quarter and at other times upon the call of the Chair.

4. The Board may meet in closed session:

(a) To discuss matters relating to personnel;

(b) With investment counsel to plan future investments or establish investment objectives and policies;

(c) With legal counsel to receive advice upon claims or suits by or against the Program;

(d) To prepare a request for a proposal or other solicitation for bids to be released by the Board for competitive bidding; ~~for~~



(e) *To conduct an annual review of the performance of the Executive Officer; or*

(f) As otherwise provided pursuant to chapter 241 of NRS.

5. Except as otherwise provided in this subsection, if the Board causes a meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS, the Board shall post a transcript of the meeting on its Internet website not later than 30 days after the meeting. The Board shall post a transcript of a closed session of the Board on its Internet website when the Board determines that the matters discussed no longer require confidentiality and, if applicable, the person whose character, conduct, competence or health was discussed in the closed session has consented to the posting.

6. The Board may appoint such advisory committees as it deems necessary to assist the Board in carrying out its duties pursuant to NRS 287.0402 to 287.049, inclusive. *If the Board appoints an advisory committee to evaluate applicants for the position of Executive Officer and recommend finalists to the Board, the advisory committee may meet in closed session to deliberate on and select the finalists.*

7. As used in this section, "request for a proposal" has the meaning ascribed to it in subsection 8 of NRS 333.020.

Sec. 3. NRS 287.0475 is hereby amended to read as follows:

287.0475 1. ~~[A]~~ *Except as otherwise provided in subsection 4, a retired public officer or employee or the surviving spouse of a retired public officer or employee who is deceased may ~~[, in any even-numbered year,]~~ reinstate any insurance under the Program, except life insurance, that, at the time of reinstatement, is provided by the Program if the retired public officer or employee : ~~[retired:]~~*

(a) *Retired:*

~~(1)~~ Pursuant to NRS 1A.350 or 1A.480, or 286.510 or 286.620, from a participating state agency or was enrolled in a retirement program provided pursuant to NRS 286.802; or

~~[(b)]~~ (2) Pursuant to NRS 1A.350 or 1A.480, or 286.510 or 286.620, from employment with a county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State which is a participating local governmental agency at the time of the request for reinstatement ~~[(1)]~~ ; and

(b) Did not have more than one period during which the retired public officer or employee was not covered by insurance under the Program on or after October 1, 2011.

2. Reinstatement pursuant to subsection 1 must be requested by:



(a) Giving written notice to the Program of the intent of the public officer or employee or surviving spouse to reinstate the insurance not later than ~~[March 15 of an even-numbered]~~ *31 days before the commencement of the plan* year;

(b) Accepting the Program's current plan of insurance and any subsequent changes thereto; and

(c) Except as otherwise provided in NRS 287.046, paying any portion of the premiums or contributions for coverage under the Program, in the manner set forth in NRS 1A.470 or 286.615, which are due from the date of reinstatement and not paid by the public employer.

3. Reinstatement of insurance excludes claims for expenses for any condition for which medical advice, treatment or consultation was rendered within 12 months before reinstatement unless the reinstated insurance has been in effect more than 12 consecutive months.

4. If a retired public officer or employee retired pursuant to NRS 1A.350 or 1A.480, or 286.510 or 286.620, from employment with a county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency, the retired public officer or employee, or the surviving spouse of such a retired public officer or employee who is deceased, may not reinstate health insurance pursuant to subsection 1 if he or she is excluded from participation in the Program pursuant to sub-subparagraph (III) of subparagraph (2) of paragraph (h) of subsection 2 of NRS 287.043.

Sec. 4. NRS 241.030 is hereby amended to read as follows:

241.030 1. Except as otherwise provided in this section and NRS 241.031 , ~~[and]~~ 241.033 ~~[.]~~ *and 287.0415*, a public body may hold a closed meeting to:

(a) Consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

(b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.

(c) Consider an appeal by a person of the results of an examination that was conducted by or on behalf of the public body, except that any action on the appeal must be taken in an open meeting and the identity of the appellant must remain confidential.

2. A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection:

(a) May be made at any time before or during the meeting; and



(b) Must be honored by the public body unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public.

3. A public body may close a meeting pursuant to subsection 1 upon a motion which specifies:

(a) The nature of the business to be considered; and

(b) The statutory authority pursuant to which the public body is authorized to close the meeting.

4. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.


(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

5. The exceptions provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

Sec. 5. NRS 241.031 is hereby amended to read as follows:

241.031 1. Except as otherwise provided in subsection 2  *and NRS 287.0415*, a public body shall not hold a closed meeting to consider the character, alleged misconduct or professional competence of:

(a) An elected member of a public body; or

(b) A person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position, including, without limitation, a president of a university, state college or community college within the Nevada System of Higher Education, a superintendent of a county school district, a county manager and a city manager.

2. The prohibition set forth in subsection 1 does not apply if the consideration of the character, alleged misconduct or professional competence of the person does not pertain to his or her role as an elected member of a public body or an appointed public officer or other officer described in paragraph (b) of subsection 1, as applicable.

